

**Founders Society Detroit Institute of Arts and
Office and Professional Employees International
Union, AFL-CIO-CLC, Petitioner. Cases 7-
RC-16699 and 7-RC-16914**

18 July 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 15 March 1983 the Regional Director for Region 7 issued a Decision and Direction of Election in Case 7-RC-16699, in which he found, inter alia, that the Board has jurisdiction over the Employer (FSDIA), and that a unit of all full-time and regular part-time employees at its two locations in Detroit, Michigan, is appropriate for collective bargaining.¹ Thereafter, the Employer filed a timely request for review contending, inter alia, the Board lacks jurisdiction over FSDIA, because it is a political subdivision as defined in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) (*Hawkins*).

The Board, by telegraphic order dated 19 April 1983, granted the request for review with respect to the jurisdictional issue and stayed the scheduled election. Thereafter, the Employer filed a brief, and the Petitioner filed a "Motion to Reconsider Order to Stay Election and Response to Employer's Request for Review of Regional Director's Decision."

On 31 March 1983 the Petitioner in Case 7-RC-16699 filed a petition in Case 7-RC-16914 seeking to represent all full-time and regular part-time professional employees. The notice of hearing in Case 7-RC-16914 limited testimony to any changes occurring since the close of the hearing in Case 7-RC-16699. A hearing was held 9 May 1983, and the parties were served at that time with an order

¹ The Regional Director found the appropriate unit included professional and nonprofessional employees, but stated that Sec. 9(b)(1) of the Act prohibits such a combined unit unless a majority of professional employees vote for inclusion in the mixed unit. The Regional Director therefore directed separate elections in a professional and nonprofessional voting group. The Petitioner did not have a sufficient showing of interest in the professional group and subsequently withdrew its petition as it pertained to professional employees.

The Employer filed a "Motion for Reconsideration of the Decision and Direction of Election and Motion to Dismiss Petition." The Employer argued that the Decision and Direction of Election permitted an additional showing of interest in the professional group postdating the close of the hearing. The Regional Director granted the motion regarding the showing of interest in a 22 March 1983 Supplemental Decision, noting that, when the unit found appropriate is smaller than the one petitioned for, the showing of interest must predate the close of the hearing. The Regional Director also denied the Employer's motion to dismiss the petition as premature insofar as the Decision and Direction of Election ordered an election in the professional group because the Petitioner must be given the opportunity to perfect its showing of interest in the professional unit.

transferring Case 7-RC-16914 to the Board. Thereafter, FSDIA filed a brief with the Board.

We consolidate Cases 7-RC-16699 and 7-RC-16914 because the parties stipulated that the transcript in Case 7-RC-16699 would be part of the record in Case 7-RC-16914, the Petitioner and the Employer are the same in both cases, and the issues raised are common to both cases.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following findings. The Detroit Institute of Art (DIA) is an art museum in Detroit, Michigan, which carries out usual museum functions including art preservation, exhibitions, and education. DIA also offers a theater arts program. The city of Detroit holds title to the land, buildings, and art collection. The city also has an arts department which reports to the mayor and oversees DIA. A seven-member city arts commission appointed by the mayor heads the arts department. The DIA is managed by Director Frederic J. Cummings, who, like the assistant director, the arts commission appoints with the mayor's approval.

Cummings reports to the arts commission, which controls the use of and access to the museum. All DIA employees report to the director. The DIA director is subject to removal at the pleasure of the arts commission, and the mayor retains in his office a signed undated letter of resignation from Cummings.

FSDIA is a Michigan nonprofit membership corporation. FSDIA's Articles of Incorporation define its purpose as assisting the city of Detroit through the arts commission in operating DIA by soliciting, receiving, administering funds, property, and works of art donated to the city or otherwise used to add to the city's art collection; promoting the public interest in art through education, lectures, and exhibits; and carrying out other activities in support of these purposes. FSDIA maintains offices in the museum and pays no rent for using the facilities. Cummings is also executive director of FSDIA. The FSDIA policy-making body is the board of trustees. As executive director of FSDIA, Cummings reports to the Board.² The same person has always occupied the offices of director of DIA and executive director of FSDIA and both the city and FSDIA contribute to Cummings' salary.³ All FSDIA employees report to Cummings.

² The mayor's aide has ex officio membership on the FSDIA board of trustees.

³ Cummings receives two paychecks. The city of Detroit pays 45 percent of Cummings' salary. The remaining 55 percent comes from FSDIA.

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As part of his duties as director of DIA and executive director of FSDIA, Cummings is responsible for formulating the annual budget and the Five Year Plan. The Five Year Plan contains projected expenditures, programs, and financial and other goals for FSDIA and DIA, including proposed staffing requirements. The arts commission must approve the Five Year Plan. The jurisdictional issue is whether FSDIA is a political subdivision within the meaning of Section 2(2) of the Act. The *Hawkins* Court noted that the Board has "limited the exemption for political subdivisions to entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate."⁴ We find that the second test is met here because FSDIA is administered by Frederick J. Cummings, who is responsible to public officials.

Like his predecessors, Cummings heads both FSDIA and DIA. He holds the DIA directorship at the pleasure of the mayor and arts commission,

_____ funds. Robert T. Weston holds the museum administrator and FSDIA controller positions. Both FSDIA and the city compensate Weston. The deputy director of FSDIA, who has authority over the curatorial staff, is also jointly paid.

⁴ 402 U.S. at 604-605.

and there is a signed letter of resignation in the mayor's office. As head of FSDIA and DIA, Cummings formulates the Five Year Plan which covers, inter alia, projected expenditures and staffing needs for both organizations. The arts commission must approve the Five Year Plan. Employees of both organizations are responsible to him.

The DIA director and FSDIA executive director positions are inextricable, because both must be held by the same individual, whose salary is paid jointly by the two organizations. We conclude that Cummings' ultimate accountability—as director of DIA—to the mayor, and Cummings' responsibility for the Five Year Plan covering both FSDIA and DIA, are sufficient to establish that Cummings, as head of both organizations, is responsible to municipal public officials. We therefore conclude that FSDIA is a political subdivision exempt from coverage of the Act under Section 2(2).⁵

Accordingly, we shall dismiss the petitions.

ORDER

Cases 7-RC-16699 and 7-RC-16914 are consolidated. The petition in each case is dismissed.

⁵ See *Prairie Home Cemetery*, 266 NLRB 678 (1983).